IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.671 of 2007

K.Bhuvaneshwari .. Petitioner

Vs

1. State of Tamilnadu,
   rep. by its Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Collector and
   District Magistrate,
   Villupuram District. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.Gandhikumar
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the wife of the detenu, Selvam @ Patthar Selvam, son of Nallamuthu, who was incarcerated by order dated 25.4.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 25.4.2007 in his Office Ref.No.C2/18371/2007 against the petitioner's husband, Selvam @ Patthar Selvam, son of Nallamuthu, now confined at Central Prison,

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Cuddalore, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention came to be passed by the second respondent on the basis of the ground case said to have taken place on 12.4.2007 within the jurisdiction of the Inspector of Police, Villupuram Taluk Police Station. The detenu was found to be in possession of one white coloured plastic can filled with 4 Litres of arrack, and was selling the same. A case was registered in Crime No.358 of 2007 on the file of Villupuram Taluk Police Station under Section 4(1)(i) and 4(1-A) of the Tamil Nadu Prohibition Act. On chemical analysis of the arrack seized, it was disclosed that the samples contained 2.89mg% W/V of Atropine, which is a poisonous substance, which, in the opinion of the medical officer, would develop giddiness, vomiting, congestion of eye lids and respiratory failure, and if not treated vigorously would result in death due to Atropine poison.

3. The second respondent, taking note of this case as a ground case and finding that there are four adverse cases pending against the detenu for the offences punishable under Sections 4(1)(A)(aaa), 4(1)(i) and 4(1-A) of the Tamil Nadu Prohibition Act, and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered him detention dubbing him as a Bootlegger.

4. Since Mr.K.Gandhikumar, learned counsel for the petitioner wants to restrict his submission only on the ground of delay in considering the representation, we do not propose to go into the other aspects, except to refer the delay in considering the representation as highlighted by the counsel for the petitioner.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.*

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide *Ram Sukrya*

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Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide *Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.*

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal v. State of T.N., (1999) 1 SCC 417.*

6. Coming to the case on hand, admittedly, a representation was made on behalf of the detenu to the Government on 3.4.2007. The Government received the same only on 9.5.2007. Even though the representation was received by the detaining authority on 9.5.2007 itself, parawar remarks were called for from the sponsoring authority only on 25.5.2007. Ultimately, the representation was rejected by the Government on 31.5.2007 and the same was served on the detenu on 5.6.2007. The delay in calling for the parawar remarks by the detaining authority from the sponsoring authority, viz., between 9.5.2007 and 25.5.2007 - a period of sixteen days, was highlighted by the learned counsel for the petitioner. Even though 12.5.2007, 13.5.2007, 19.5.2007 and 20.5.2007 happened to be public holidays, there is no convincing

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reply on behalf of the State for the delay in considering the representation. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for twelve days (excluding Saturday and Sunday), between 9.5.2007 and 25.5.2007. There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194* is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476* .

9. In the instant case, there is delay of twelve days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 25.4.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

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Asst.Registrar

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Sub Asst.Registrar

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ATR

To:

1. The Secretary to Government,
   State of Tamilnadu,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Collector and
   District Magistrate,
   Villupuram District.

3. The Superintendent,
   Central Prison,
   Cuddalore.

4. The Public Prosecutor,
   High Court, Madras.

5.The Joint Secretary to Government
Public (Law and Order)
Fort St.George, Chennai -9.

PV (CO)
km/10.9.

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